

## Message Text

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ORIGIN OES-06

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TO USMISSION EC BRUSSELS PRIORITY  
INFO AMEMBASSY BRUSSELS  
AMEMBASSY COPENHAGEN  
AMEMBASSY PARIS  
AMEMBASSY ROME  
AMEMBASSY BONN  
AMEMBASSY DUBLIN  
AMEMBASSY LUXEMBOURG  
AMEMBASSY THE HAGUE  
AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: EEC, PLOS, EFIS, US

SUBJECT: STATUS OF EC PROCEDURES TO PUT GIFA INTO FORCE

REF: EC BRUSSELS 02661

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1. SUMMARY. FOLLOWING IS DEPARTMENT BACKGROUND AND  
SUGGESTED TALKING POINTS FOR USE IN RESPONDING TO  
GALLAGHER. DEPARTMENT DOES NOT HAVE LEGAL AND POLITICAL  
FLEXIBILITY TO DEVISE INTERIM SOLUTION WHICH WOULD PERMIT  
EC FISHING IN U.S. ZONE PRIOR TO ENTRY INTO FORCE OF GIFA.  
IN ADDITION, FIRST PART OF SQUID SEASON WILL CLOSE  
MARCH 31, AND LATEST NMFS SURVEILLANCE DATA INDICATES

THAT ITALY HAS ALREADY EXCEEDED MAJOR COMPONENT OF 1977 SQUID ALLOCATION. END SUMMARY.

2. ISSUE OF NATURE AND TIMING OF EC INTERNAL ARRANGEMENTS REGARDING GIFA HAS BEEN A LONG-STANDING SUBJECT OF DISCUSSION BETWEEN U.S. AND EC FISHERY NEGOTIATORS. QUESTION OF EC QUOTE MANDATE UNQUOTE TO (A) SIGN AND (B) CARRY OUT A GIFA WAS AMONG THE FIRST DISCUSSED WITH COMMUNITY OFFICIALS LAST YEAR. DURING BRUSSELS TALKS LAST NOVEMBER, EC NEGOTIATORS TOLD US (SEE EC BRUSSELS 11053, NOVEMBER 10, 1976) THAT QUOTE CONCLUSION OF AGREEMENT WOULD BE AFTER APPROVAL BY MEMBER STATES IN

THE COUNCIL AND. . . WOULD INDICATE COMPLETION OF THOSE INTERNAL PROCEDURES NECESSARY TO PUT AGREEMENT INTO FORCE, BIND MEMBER STATES AND ASSURE COMPLIANCE BY COMMUNITY UNQUOTE. EC OFFICIALS QUOTE TOOK PAINS TO ASSURE US DEL THAT THE NECESSARY INTERNAL INSTRUMENTS WOULD BE DRAFTED PROMPTLY, AND SUGGESTED THAT MEMBER STATE APPROVAL OF THEM IN ACCORDANCE WITH EC PROCEDURES WOULD NOT BE UN-DULY TIME-CONSUMING UNQUOTE.

3. ON BASIS OF SUCH ASSURANCES, WE WERE SATISFIED THAT EC COUNCIL'S ISSUANCE OF FULL POWERS TO SIGN, DATED FEBRUARY 14, 1977, WAS SUFFICIENT MANDATE FOR COMMUNITY SIGNATURE. THOSE FULL POWERS FROM THE EC COUNCIL STIPULATE THAT QUOTE THE COUNCIL, UPON COMPLETION OF THE INTERNAL PROCEDURES FOR THE CONCLUSION OF THE AGREEMENT, RESERVES THE RIGHT TO APPROVE AND CONCLUDE (THE AGREE-LIMITED OFFICIAL USE

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MENT) UNQUOTE, THUS MAKING CLEAR THAT THE GIFA WILL NOT BE CONCLUDED IN THE EYES OF THE COMMUNITY UNTIL AFTER COMPLETION OF INTERNAL PROCEDURES AND A FINAL REVIEW BY THE COUNCIL. ARTICLE XVI OF THE GIFA, IN A FORMULATION FIRST PROPOSED BY THE U.S. AND SUBSEQUENTLY CONTAINED IN THE COMMUNITY'S OWN COUNTER-DRAFT OF OCTOBER 15, 1976 (TEXT IN LUXEMBOURG 00992, OCTOBER 20, 1976), STATES EXPLICITLY THAT THE GIFA WILL COME INTO FORCE UPON EXCHANGE OF DIPLOMATIC NOTES INDICATING THAT THE NECESSARY INTERNAL PROCEDURES ON BOTH SIDES HAVE BEEN COMPLETED. U.S. AGREED THAT RECEIPT OF SUCH A NOTE FROM THE COMMUNITY WOULD BE ACCEPTED ON ITS FACE, LEAVING TO THE EC THE DETERMINATION OF WHAT INTERNAL PROCEDURES WITHIN THE COMMUNITY IT CONSIDERED NECESSARY. SATISFACTION ON POINTS IN THIS AND PRECEDING PARAGRAPH ENABLED DEPARTMENT TO TESTIFY BEFORE THE U.S. CONGRESS ON FEBRUARY 22, 1977 (STATE 47197) THAT QUOTE IN FORM AND CONTENT THE COMMUNITY AGREEMENT IS LIKE ALL THE OTHERS. . . THERE IS NOTHING UNUSUAL ABOUT THE AGREEMENT WITH THE COM-

MUNITY UNQUOTE.

4. ON MARCH 4, 1977 (STATE 51023), WE FORMALLY NOTIFIED THE COMMUNITY THAT U.S. INTERNAL PROCEDURES HAD BEEN COMPLETED AND THAT THE GIFA WOULD BY ITS TERMS ENTER INTO FORCE UPON CONFIRMATION BY THE COMMUNITY THAT ITS OWN INTERNAL PROCEDURES HAD ALSO BEEN COMPLETED. REFTEL INDICATES THAT NEITHER THE NECESSARY EC INTERNAL PROCEDURES -- WHATEVER THE COMMUNITY DECIDES THOSE ARE -- NOR THE FINAL COUNCIL REVIEW STIPULATED IN THE COUNCIL'S GRANT OF FULL POWERS HAVE BEEN CONCLUDED. NEITHER THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, NOR THE GIFA PROVIDE FOR PROVISIONAL ENTRY INTO FORCE, NOR FOR THE GRANTING OF PERMITS TO THOSE WHO ARE NOT YET

GIFA QUOTE PARTIES UNQUOTE UPON RECEIPT OF QUOTE MORAL ASSURANCES UNQUOTE THAT CERTAIN OF THE GIFA'S OBLIGATED LIMITED OFFICIAL USE

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TIONS WILL BE UNDERTAKEN.

5. THE PRACTICAL EFFECT OF GIFA ENTRY-INTO-FORCE ON POST-MARCH 1 FISHING BY EC MEMBER STATE VESSELS WAS DISCUSSED WITH GALLAGHER AND HARDY DURING THE FEBRUARY 3-4, 1977 TALKS IN WASHINGTON. THE U.S. SIDE SET FORTH OUR TIME ESTIMATE FOR COMPLETION OF U.S. INTERNAL PROCEDURES, AND ASKED THE EC SIDE TO DO THE SAME. GALLAGHER AND HARDY RESPONDED THAT THE MATTER HAD NOT BEEN FULLY THOUGHT OUT WITHIN THE COMMUNITY, AND SUGGESTED A NUMBER OF POSSIBILITIES INCLUDING A QUOTE WORST CASE UNQUOTE ANALYSIS INVOLVING CONSULTATION WITH THE EUROPEAN PARLIAMENT WHICH THEY SAID COULD TAKE A TOTAL OF 3-4 MONTHS. THEY SAID, HOWEVER, THAT THEY DID NOT CONSIDER THIS A PRACTICAL PROBLEM FOR THE COMMUNITY, SINCE IT WAS THEIR UNDERSTANDING THAT EC MEMBER STATE VESSELS WOULD NOT BEGIN THEIR NORMAL FISHING IN THE U.S. ZONE UNTIL THE SUMMER. WHEN THE U.S. SIDE POINTED OUT THAT OUR INFORMATION WAS THAT SOME ITALIAN VESSELS WOULD NORMALLY BE FISHING FOR SQUID IN OUR ZONE AFTER MARCH 1, EC NEGOTIATORS REGISTERED SOME SURPRISE AND SAID THAT THEY (REPEAT THEY) WOULD HAVE TO LOOK INTO THIS IN ORDER TO QUOTE EXPEDITE UNQUOTE THE INTERNAL EC PROCEDURES FOR BRINGING THE GIFA INTO FORCE.

6. MISSION HAS DISCRETION TO USE PARAS 2-5 ABOVE AS BACKGROUND WITH COMMISSION OFFICIALS, AND IS REQUESTED TO MAKE THE FOLLOWING POINTS IN RESPONSE TO GALLAGHER'S REFTEL REQUEST:

-- THE U.S. CONTINUES IN ITS DESIRE TO APPROACH THE

ISSUE OF FISHING BY EC MEMBER STATE VESSELS IN THE U.S.  
FISHERIES ZONE IN A COOPERATIVE AND FORTHCOMING MANNER,  
AND IN THE CONTEXT OF OUR OVERALL CLOSE RELATIONS WITH  
THE COMMUNITY.

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-- NEVERTHELESS, THE PROVISIONS OF THE U.S. FISHERY  
CONSERVATION AND MANAGEMENT ACT OF 1976, AND OF THE US/  
EC GIFA APPROVED UNDER THE AUTHORITY OF THAT ACT ON  
MARCH 1, 1977, APPEAR UNAMBIGUOUS IN REQUIRING THAT  
(A) FISHING PERMITS FOR MEMBER STATE VESSELS CAN ONLY BE  
ISSUED PURSUANT TO A VALID GIFA IN FORCE, AND (B) THE  
US/EC GIFA CAN ONLY BE BROUGHT INTO FORCE BY AN EXCHANGE  
OF DIPLOMATIC NOTES CERTIFYING THAT RESPECTIVE INTERNAL  
ARRANGEMENTS HAVE BEEN COMPLETED.

-- SUCH EXCHANGES OF NOTES HAVE BEEN ACCOMPLISHED  
WITH ALL PARTIES TO GIFAS SIGNED THUS FAR, WITH THE  
EXCEPTION OF ROMANIA (WHICH HAS NOT YET RESPONDED TO  
OUR NOTE BUT WHICH DOES NOT NORMALLY FISH UNTIL THE FALL  
SEASON). IN THE CASE OF JAPAN, A DUAL PROCEDURE WAS  
USED BECAUSE OF DELAYS IN ITS DOMESTIC LEGISLATIVE  
APPROVAL PROCEDURE WHICH THE JAPANESE GOVERNMENT CLEARLY  
IDENTIFIED AT THE BEGINNING OF OUR NEGOTIATIONS. TWO  
GIFA AGREEMENTS WERE CONCLUDED -- AN EXCHANGE OF NOTES  
APPLICABLE FOR 1977 ONLY, WHICH COULD ENTER IMMEDIATELY  
INTO FORCE FOR JAPAN, AND A LONG-TERM GIFA WHICH MUST BE  
APPROVED BY BOTH THE U.S. CONGRESS AND JAPANESE DIET  
IF JAPAN IS TO FISH AFTER DECEMBER 31, 1977. AFTER  
CLEARLY INDICATING ITS CONCERN WITH THE FORM OF THE  
GIFA FOR 1977, CONGRESS APPROVED IT ON MARCH 3, 1977.  
IMPORTANTLY, WHILE SHORTER THAN THE LONG-TERM AGREEMENT,  
THE 1977 JAPANESE AGREEMENT IS A GIFA NONETHELESS --  
NO OTHER TYPE OF BILATERAL AGREEMENT AS A FRAMEWORK FOR  
FOREIGN FISHING IS ACCEPTABLE UNDER THE ACT. AMENDMENT  
OF THE SIGNED EC GIFA, AND RENEGOTIATION OF A SEPARATE  
GIFA FOR AN INTERIM PERIOD, INCLUDING APPROPRIATE  
REGIONAL COUNCIL COORDINATION AND CONGRESSIONAL APPROVAL  
WOULD INVOLVE MANY MONTHS OF COMPLEX NEGOTIATIONS AND  
PROBABLY PROHIBITIVE POLITICAL COSTS.

-- OUR INFORMATION IS THAT ITALIAN VESSELS HAD FOR ALL  
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PRACTICAL PURPOSES ALREADY TAKEN THEIR 1977 QUOTA BEFORE

MARCH 1. LATEST ESTIMATES FROM NMFS INDICATE A SUBSTANTIALY OVERFISHED LOLIGO SQUID QUOTA, WITH CATCHES OF 2,148 MT AGAINST ALLOCATION OF 1,640 MT, AND CATCHES OF 55 MT OF ITALY'S 980 MT ILLEX SQUID QUOTA. IN ADDITION, THE SQUID FISHERY AREAS (WINDOWS) CLOSE MARCH 31, AND WILL NOT REOPEN UNTIL JUNE-SEPTEMBER PERIOD. THIS SUGGESTS THAT AN INTERIM PROCEDURE WOULD IN ANY EVENT NOT BE WARRANTED AS A PRACTICAL FISHERIES SOLUTION.

-- WE SHARE THE COMMISSION'S REGRET THAT THE COMMUNITY'S INTERNAL PROCEDURES FOR BRINGING THE GIFA INTO EFFECT AND PERMITTING OUR PROCESSING OF APPLICATIONS FROM MEMBER STATE VESSELS HAVE NOT YET BEEN CONCLUDED. WE ARE RELIEVED BY COMMISSION ASSURANCES THAT THESE STEPS WILL HAVE BEEN COMPLETED WELL BEFORE VESSELS OF THE FEDERAL REPUBLIC OF GERMANY AND FRANCE NORMALLY WOULD EXPECT TO COMMENCE FISHING OPERATIONS IN THE U.S. ZONE LATER THIS YEAR. WE ARE PREPARED TO PROCESS THOSE APPLICATIONS EXPEDITIOUSLY AS SOON AS WE ARE NOTIFIED THAT THE GIFA HAS ENTERED INTO FORCE FOR THE COMMUNITY.  
VANCE

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